

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

ROSEMARIE SANTIAGO,

Plaintiff,

v.

BILLY JOE LOFLIN, JR. AND SWIFT
TRANSPORTATION COMPANY, INC.,

Defendant.

CIVIL ACTION

FILE NO.: _____

**MOTION TO COMPEL PRODUCTION OF DOCUMENTS FROM
BEACON MUTUAL INSURANCE COMPANY**

COME NOW Defendants in the above-styled action (hereinafter, "Defendants") by and through the undersigned counsel, and move this Court, pursuant to Federal Rule of Civil Procedure 37 for an order compelling non-party Beacon Mutual Insurance Company (hereinafter, "Beacon") to produce documents pursuant to subpoena. In support of this motion, Defendants refer this Honorable Court to Defendants' Memorandum of Law filed herewith.

DENNIS, CORRY, PORTER & SMITH,
L.L.P.

BY 

RAYMOND J. KUREY
Georgia Bar No. 430472
RYAN T. STRICKLAND
Georgia Bar No. 687904
For the Firm
Attorneys for Defendants

Piedmont Fourteen
3535 Piedmont Road, Suite 900
Atlanta, GA 30305
Telephone: (404) 365-0102
Facsimile: (404) 365-0134

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing
MOTION TO COMPEL PRODUCTION OF DOCUMENTS FROM
BEACON MUTUAL INSURANCE COMPANY by depositing said copy in the
United States mail in a properly-addressed envelope with adequate postage thereon
to:

Richard H. Middleton, Jr., Esq.
The Middleton Firm, LLC
P. O. Box 10006
Savannah, GA 31412

Beacon Mutual Insurance Co.
Attn.: Records Custodian
One Beacon Centre
Warwick, RI 02886

This 27 day of September, 2005.


RYAN T. STRICKLAND
For the Firm

THIS IS TO CERTIFY that, pursuant to LR 5.1B, NDGa., the above document was prepared in Times New Roman, 14 pt.

696-8676(RJK)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

ROSEMARIE SANTIAGO,

Plaintiff,

v.

BILLY JOE LOFLIN, JR. AND SWIFT
TRANSPORTATION COMPANY, INC.,

Defendant.

MISC 05 - 124

CIVIL ACTION
FILE NO.: _____

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION
TO COMPEL PRODUCTION OF DOCUMENTS BY BEACON MUTUAL
INSURANCE COMPANY**

COME NOW Defendants in the above-styled action (hereinafter, "Defendants") by and through the undersigned counsel, and file this memorandum of law in support of their motion to compel production of documents from non-party Beacon Mutual Insurance Company (hereinafter, "Beacon"). In support of this motion, Defendants show the Court as follows:

I. PROCEDURAL HISTORY

This case relates to a motor vehicle accident in which Plaintiff alleges she was injured on November 20, 2002. Beacon provided insurance coverage for at least a portion of Plaintiff's medical treatment following the subject accident.

Plaintiff initiated this suit on or about June 14, 2004. Discovery is set to close in this case on November 1, 2005.

Defendants served a subpoena for the production of documents on non-party Beacon on September 2, 2004. (See Defendants' Subpoena to Beacon, attached hereto as EXHIBIT A). When Plaintiff did not object and Beacon failed to respond, Defendants sent Beacon a letter requesting the documents pursuant to subpoena on October 25, 2004. (See Defendants Letter to Beacon dated October 25, 2004, attached as EXHIBIT B). When Beacon still refused to respond, Defendants sent another letter requesting these documents on July 13, 2005 (See Defendants Letter to Beacon dated July 13, 2005, attached as EXHIBIT C). As of the date of filing this Motion, Beacon has never responded to Defendants' subpoena.

II. ARGUMENT AND CITATION OF AUTHORITY

A. STANDARD OF REVIEW

Pursuant to Fed. R. Civ. P. 26(b)(1), parties:

"may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter.

...

Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence."

Fed. R. Civ. P. 26(b)(1).

The discovery rules contained in the Federal Rules of Civil Procedure are to be construed broadly. Yancy v. Hooten, 180 F.R.D. 203 (D. Conn. 1998). Whether to allow discovery falls within the broad discretion of the Court. The Chemical and Industrial Corp. v. Druffel, 301 F.2d 126 (6th Cir. 1962).

B. DEFENDANTS' SUBPOENA FOR PRODUCTION OF DOCUMENTS TO NONPARTY BEACON MUTUAL INSURANCE COMPANY IS PROPER.

Production should be compelled pursuant to Defendants' subpoena to Beacon because the subpoena properly requests discoverable information. In this action, Plaintiff is seeking to recover for alleged personal injuries allegedly arising from the subject accident. Beacon provided insurance coverage for at least a portion of Plaintiff's medical treatment following the subject accident. As a result, Beacon has information directly related to Plaintiff's medical treatment following

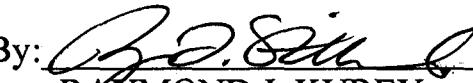
this accident. This information is relevant to Plaintiff's personal injury claims, making it discoverable. See Fed. R. Civ. P. 26(b)(1).

V. CONCLUSION

Based on the foregoing, Defendants respectfully request that an order be entered compelling Beacon to produce all materials requested in Defendants subpoena, and any other relief the Court deems proper.

Respectfully submitted, this the 27 day of September, 2004.

DENNIS, CORRY, PORTER & SMITH, L.L.P.

By: 
RAYMOND J. KUREY
Georgia Bar No. 430472
RYAN T. STRICKLAND
Georgia Bar No. 687904
For the Firm
Attorney for Defendant

Piedmont Fourteen
3535 Piedmont Road, Suite 900
Atlanta, Georgia 30305-4611
Telephone: (404) 365-0102
Facsimile: (404) 365-0134

DENNIS, CORRY, PORTER & SMITH, L.L.P.

PIEDMONT FOURTEEN
3535 PIEDMONT ROAD, SUITE 900
ATLANTA, GEORGIA 30305

www.dclaw.com

TELEPHONE 404 365-0102

FACSIMILE 404 365-0134

September 2, 2004

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Beacon Mutual Insurance Co.

Attn.: Claims Department

One Beacon Centre

Warwick, RI 02886

Re: Insured
Date of Birth

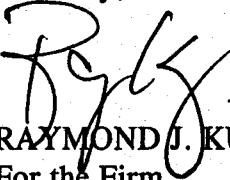
: Rosemarie Santiago
: [REDACTED]
: [REDACTED]
: [REDACTED]

Dear Sir/Madam:

The enclosed subpoena has been served on you in accordance with Rules 34(c) and 45, Federal Rules of Civil Procedure. The purpose of the subpoena is for the production of documents only. Your response to this subpoena is required by simply returning the requested records to me at the above address along with your statement for the reproduction of these records. Also enclosed is a Certificate of Authentication for you to return to me along with the requested records. Please advise me if the cost of reproducing these records exceeds \$50.00 prior to reproducing such records.

If you have any questions, please contact me. Thank you.

Sincerely,



RAYMOND J. KUREY
For the Firm

RJK/ap

Enclosure

cc: Richard H. Middleton, Jr., Esq.

Beacon Mutual Insurance Co.
Attn: Claims Department
One Beacon Centre
Warwick, RI 02886

CERTIFICATE OF AUTHENTICATION OF RECORDS

THE UNDERSIGNED, Custodian of Records for Beacon Mutual Insurance Co., certifies that the enclosed records are complete and accurate reproductions of the records of this facility concerning Rosemarie Santiago and that said records were kept in the normal course of business for this facility.

(Print Name)
Custodian of Records

Sworn to and subscribed before me this
____ day of _____, 2004.

Notary Public

My Commission Expires:

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

Rosemarie Santiago	SUBPOENA IN A CIVIL CASE
PLAINTIFF	
v.	CASE NUMBER: 4:04-CV-168-HLM
Billy Joe Loflin, Jr. and Swift Transportation Company, Inc.	In the United States District Court For the Northern District of Georgia Rome Division
DEFENDANT	

TO: Beacon Mutual Insurance Co.
One Beacon Centre
Warwick, RI 02886

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME

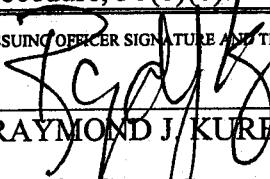
YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects): SEE ATTACHMENT "A"

PLACE	DATE AND TIME
Law offices of Richard M. Fisher, Esq., Macioci & Fisher, 130 Touro Street, Newport, RI 02840	October 2, 2004 at 9:00 a.m.

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
 RAYMOND J. KUREY, Attorney for Defendants	September 2, 2004
Dennis, Corry, Porter & Smith, L.L.P., Piedmont Fourteen, 3535 Piedmont Road, Suite 900, Atlanta, Georgia 30305; 404-365-0102	

ATTACHMENT "A"

RE: Insured : Rosemarie Santiago
Date of Birth : [REDACTED]
Social Security No. : [REDACTED]

PURSUANT TO SUBPOENA, please produce **CERTIFIED COPIES** of any and all insurance records regarding the above-referenced insured, including but not limited to:

- (1) Claims for insurance submitted;
- (2) Correspondence;
- (3) Medical records and bills;
- (4) Employer certifications;
- (5) Witness statements;
- (6) Any notes of your rights to reimbursement and any notices of your right to bring claims against others if you received federal guaranties, subsidies or funding under ERISA; and
- (7) All claims and investigative notes submitted.

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing Subpoena in a Civil Case by depositing said copy in the United States mail in a properly-addressed envelope with adequate postage thereon to:

Richard H. Middleton, Jr., Esq.
The Middleton Firm, LLC
P. O. Box 10006
Savannah, GA 31412

This 29th day of September, 2004.


RAYMOND J. KUREY
For the Firm

LAW OFFICES
DENNIS, CORRY, PORTER & SMITH, L.L.P.

PIEDMONT FOURTEEN
3535 PIEDMONT ROAD, SUITE 900
ATLANTA, GEORGIA 30305

www.dcplaw.com

TELEPHONE 404 365-0102

FACSIMILE 404 365-0134

October 25, 2004

Attn.: Records Custodian
Beacon Mutual Insurance Co.
One Beacon Centre
Warwick , RI 02886

Re: Patient : Rosemarie Santiago
Date of Birth : 9/5/1962
Social Security No. : 071-58-4765
Our File No. : 696-8676 (RJK)

Dear Records Custodian:

Our records indicate that a federal subpoena was issued to you more than thirty (30) days ago. To date we have received no response. Please review your files and forward the requested documents within the next week.

We will be happy to pay the reasonable costs, up to \$50.00, of reproducing these records. Please fax me an invoice so that I may submit same for payment. If the reproduction costs exceed \$50.00, please contact me at 1-800-735-0838, extension 235, so that we can discuss obtaining the records.

Thank you. I appreciate your assistance.

Sincerely,

RAYMOND J. KUREY
For the Firm

RJK/ap

LAW OFFICES
DENNIS, CORRY, PORTER & SMITH, L.L.P.

PIEDMONT FOURTEEN
3535 PIEDMONT ROAD, SUITE 900
ATLANTA, GEORGIA 30305

www.dcplaw.com

TELEPHONE 404 365-0102

FACSIMILE 404 365-0134

July 13, 2005

Beacon Mutual Insurance Co.
Attn.: Records Custodian
One Beacon Centre
Warwick , RI 02886

Re: Employee : Rosemarie Santiago
Date of Birth : 9/5/1962
Social Security No. : 071-58-4765
Our File No. : 696-8676 (RJK)

Dear Records Custodian:

This letter concerns a federal subpoena which was originally served on you September 2, 2004 and requested a complete certified copy of the records of Rosemarie Santiago. A follow up letter was sent to you on October 25, 2004 asking you to comply with our request. We have received no response.

This is our final attempt to resolve this issue and obtain a certified copy of Tatum Whaley's records. If I am not in receipt of the records by **July 21, 2005**, I will have no choice but to seek an order compelling the records from the Judge and to seek attorney's fees for filing the motion. I appreciate your anticipated cooperation in this regard.

Sincerely,

RAYMOND J. KUREY
For the Firm

RJK/kjm

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing
**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION
TO COMPEL PRODUCTION OF DOCUMENTS BY BEACON MUTUAL
INSURANCE COMPANY** by depositing said copy in the United States mail in a
properly-addressed envelope with adequate postage thereon to:

Richard H. Middleton, Jr., Esq.
The Middleton Firm, LLC
P. O. Box 10006
Savannah, GA 31412

Beacon Mutual Insurance Co.
Attn.: Records Custodian
One Beacon Centre
Warwick , RI 02886

This 29 day of September, 2005.



RYAN T. STRICKLAND
For the Firm

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